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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/287,707 04/07/99 MIZUTANI

Y 1832/36

EXAMINER

PM82/0529

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NEW YORK NY 10004

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ART UNIT

PAPER NUMBER

3613

DATE MAILED:

05/29/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/287,707

Applicant(s)

MIZUTANI ET AL.

Examiner

Robert A Siconolfi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 35-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 35-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

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DETAILED ACTION

1. Power of Attorney filed on 12/7/00 has been received. Amendment filed on 3/27/01 has been received.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1,3,35 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6,11, and 14 of copending Application No. 09/481,365. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the instant claims is broad enough to encompass the disclosure of the Claims in 09/481,365 .

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 1 and 35 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/481,273. Although the conflicting claims are not identical, they are

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not patentably distinct from each other because the scope of the instant claims is broad enough to encompass the disclosure of claim 1 of 09/481,273.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3, 21, 35-37, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sorensen in view of Ganzel (U.S. Patent no. 6,053,582).

Sorensen discloses:

Brake operating member 72, master cylinder not shown but attached to the output of the boost device (cylinder housing , pressuring piston, pressure chamber), assisting device 24 (master cylinder characteristic control device) [assisting cylinder , assisting piston, high pressure source 18, reservoir 22, solenoid pressure control valve device 50,32], emergency reservoir communication device102

Sorensen does not specifically show a sensing means but implies the use of sensing means with the system disclosed (see Column 3 lines 20-22). In order to sense the force of the brake pedal, a sensing means must be used. Ganzel teaches the use of sensing means (Figure 2 force sensor 11, switch 201). It would have been obvious to

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one of ordinary skill in the art at the time the invention was made to use sensing means as taught by Ganzel in order to provide the sensing mean that Sorensen requires while ensuring protection against failure through the use of 2 sensors.

7. Claims 38 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sorensen, as modified as applied to claim 1 above, and further in view of Schonlau (U.S. Patent no. 4,914,917).

Sorensen, as modified is relied upon as above. Sorensen, as modified, does not disclose the use of a stroke sensor. Schonlau teaches the use of a stroke sensor (see figure travel sensor 82). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a stroke sensor as taught by Schonlau instead of a brake switch in the system of Sorensen, as modified, in order to provide better control as the stroke sensor provides more information than the brake switch.

Response to Arguments

8. Applicant's arguments with respect to claims 1,3,21, and 35 have been considered but are moot in view of the new ground(s) of rejection.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

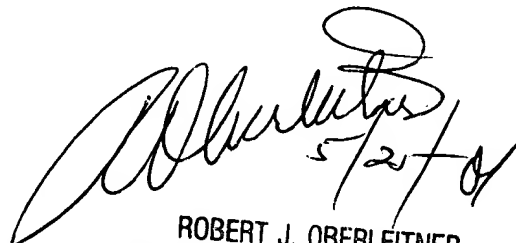
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A Siconolfi whose telephone number is (703) 305-0580. The examiner can normally be reached on M-F 8 am-4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Oberleitner can be reached on (703) 308-2569. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Robert A Siconolfi
Examiner
Art Unit 3613

RS
May 24, 2001


ROBERT J. OBERLEITNER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600